

# 15 questions to ask when auditing your employee handbook

It's good business to review your employee handbook once a year and revise it as necessary. Answer these questions to gauge its thoroughness and reliability:

1. Does your employee handbook clearly state that it is not to be considered a contract in any way and that you reserve the right to change it?
2. If your employee handbook lists offenses warranting discipline, does it make clear that those listed are merely illustrative rather than exhaustive?
3. Does your employee handbook encourage employees to bring their complaints to their union or to management?
4. Does your employee handbook make clear that the organization won't tolerate any type of harassment?
5. Does your employee handbook provide procedures for addressing complaints of that nature?
6. Do the benefits policies contained in the employee handbook comply with federal and state laws?
7. Do all employees receive copies of the handbook each time it is revised?
8. Do you have a receipt form that employees sign when they receive the handbook or any revisions of it?
9. Is the handbook current in all areas?
10. Does your attorney review your employee handbook regularly to see that it contains nothing in conflict with federal and state laws or local regulations?
11. Is it written clearly and simply?
12. Is the language respectful of employees?
13. Are the rules described in the handbook enforced evenhandedly?
14. Do you make sure that your employees read the handbook?
15. Is it free of political statements, including the organization's opinions regarding labor organizing?

If you answered "No" to any of these questions, you should review your policies and the way they are communicated to your workforce.

# Ask the Attorney with Nancy Delogu



## Should we keep our policy manual and our employee handbook separate?

**Reader Question:** “We currently have an employee manual that is an employee handbook and policy manual rolled into one. Are there reasons to keep these separate?” – *Sandy, Illinois*

**Nancy Delogu, Esq.:** Not necessarily, but think about how you use them and whether having one large manual makes updating more burdensome. In general, you also want to take steps to ensure that your handbook/policies do not create a promise or expectation of continued employment if your workplace is “at will.” This typically requires you to clearly and prominently display disclaimers regarding any policies that could be read as promises, but it may also be better to keep handbook policies apart from operating policies to avoid confusion.

Finally, if your policy manual contains more than just policies—for example, if it contains current practices with respect to how the policies are administered, which are more appropriately human resources or management-focused, and which are more appropriately guidelines than policies, then you may want to separate the two.

## Do exempts and nonexempts each need their own employee handbooks?

**Reader Question:** “For organizations with both exempt and nonexempt populations, is it permissible for an employer to have different time off policies for the respective populations? For example, to design an unlimited vacation policy for the exempts and a paid time off policy for the nonexempts? And if yes, would it be advisable to have two different employee handbooks by classification where such policies would be different, or maintain one handbook with the different policies identified by classification?” – *Crystal, Minnesota*

**Nancy Delogu, Esq.:** Yes, you can adopt different programs offering time off—paid or unpaid—to different groups or classes of individuals within one organization. That is quite a common practice, in fact. Be aware, however, of state and local laws that may impose additional requirements. For example, some jurisdictions require employers to offer a minimum number of paid sick days, and follow those rules. You will also have to follow laws like the FMLA and the ADA that may have different thresholds for determining employee eligibility for time away from work, as well as integrate your policy administration with any wage replacement programs like short- and long-term disability programs.

It is your decision on how to communicate those policies. For example, if your organization has a handbook, and you think the policies will read as roughly equal, you may choose to publish both policies side-by-side. Using your example, an unlimited vacation policy for exempt workers where it is known these individuals work very

long hours or are measured by sales success may be well-accepted by hourly workers who receive fewer paid days off but work a less demanding schedule. If, on the other hand, you have many policies that are specific to one group but not the other, you might want to put together one handbook for managers and another for non-exempt workers.

## How best to scale our employee handbook across several states?

**Reader Question:** “My company’s corporate office is in Florida. We also employ workers in New York, California, Nevada and Massachusetts. I was considering creating a general employee handbook and doing tabs, per state, to include specific-state compliance. How do I efficiently find differences and which ones should I make sure I include?” – *Mary, Florida*

**Nancy Delogu, Esq.:** This sounds like a good approach and you will most likely find that many of the policies typically found in an employee handbook will work in most of your jurisdictions. To be sure that you’ve addressed any state-specific rules, you may want to reach out to state-based business associations, particularly if you are in a unique or specialized business. For example, the [CalChamber](#) offers online resources for building a handbook, including useful information such as what policies are mandatory and must be included in a handbook.

## How much detail about our benefits plan should we include in the employee handbook?

**Reader Question:** “I’m working with a small business and their handbook. Should they include a safe harbor clause under the benefits section for their 401k plan? In the past, I have limited the amount of information on benefits in the handbook because they can change, and instead I just refer the employee to the summary plan documents.” – *Ann, Kentucky*

**Nancy Delogu, Esq.:** I agree with you that for handbook descriptions of employee benefit plans, it is important to refer employees to the official “Summary Plan Description” for full details on how the program (in this case, a 401k) is administered. I don’t know how much detail your client is proposing to include, but general information on who is entitled to receive a safe harbor contribution – for example, the fact that you must be 21 years old and have attained a year of service – seem very relevant to the majority of employees, while details about why the employer has adopted that approach may be too much for a handbook.

Remember that the employer has notice requirements to participants under such a plan, so if you determine that what they want to include is too detailed for a handbook policy, ensure that they are meeting their notice obligations to participants in some other manner.